

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) NOS. 10395 OF 2004 & 23790 OF 2005**

% **Reserved on :** 11th March, 2011
Date of Decision : 23rd May, 2011

YASH PAL Petitioner
Through Ms. Maninder Acharya, Amicus
Curiae with petitioner in person.

VERSUS

THE DIRECTOR GENERAL COUNCIL OF SCIENTIFIC AND
INDUSTRIAL RESEARCH AND ANOTHER Respondents
Through Mr. V.K. Rao, Sr. Advocate with Mr.
Vaibhav Kalra, Advocate.

CORAM:
HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J.:

These two writ petitions have been filed by Yash Pal impugning two different orders dated 6th May, 2004 and 9th September, 2005 passed by the Central Administrative Tribunal, Principal Bench, Delhi (tribunal, for short). The subject matter of Writ Petition (Civil) No. 10395/2004 is also made subject matter of Writ Petition (Civil) No. 23790/2005, though in the latter

additional grounds and subsequent cause of action is raised and is the subject matter.

2. The petitioner had appeared in person and was heard. Ms. Maninder Acharya was appointed as an Amicus Curiae and was also heard.

3. The petitioner joined National Physical Laboratory, a constituent unit of the Council of Scientific and Industrial Research, the respondent, as a Fine Mechanic with effect from 18th May, 1979. The said post is in Group I category. The other categories being Group II, Group III and Group IV in the ascending order.

4. The respondent introduced a New Recruitment and Assessment Scheme (NRAS, for short), which was circulated on 2nd November, 1981 for Fast Track Promotions, (FTP, for short), to the scientific and technical staff as were in position on that date and possessed the prescribed entry level qualification for the next/higher group, subject to conditions stipulated in the scheme. The respondent by their letter dated 5th March, 1983 changed the cut off date for the prescribed eligibility qualification from 2nd November, 1981 to 31st December, 1981.

5. The petitioner completed and passed the Associate Membership Examination, Sections A and B of the Aeronautical

Society of India on 1st September, 1982. The said examination is recognized as equivalent to Bachelors Degree in Aeronautical Engineering for the purpose of recruitment by the Ministry of Education.

6. As noticed above, the cut off date in NRAS for FTP after letter dated 5th March, 1983 was 31st December, 1981. The petitioner had passed Associate Membership Examination, Sections A and B of the Aeronautical Society of India on 1st September, 1982 and, therefore, the said qualifications was acquired by the petitioner after the cut off date. On the basis of the said qualification, the petitioner was not entitled to FTP under NRAS. However, the respondent considered the case of the petitioner for FTP within Group III and by an order dated 21st February, 1983 he was, with effect from 1st September, 1982, promoted from the post of Fine Mechanic in Group I to Technician Grade VIII in Group III with three advance increments above the normal fixation.

7. NRAS came to an end on 31st March, 1988 and was replaced by the Merit and Normal Assessment Scheme (MANAS, for short), which was circulated vide letter dated 12th July, 1990 but implemented with effect from 1st April, 1988.

8. The petitioner did not question and challenge NRAS till 1991. In the said year, he filed O.A. No. 2990/1991 that he was wrongly denied consideration for promotion as Scientist Grade in Grade IV along with consequential benefits and if he had been granted the said promotion, he would have been beneficiary of further promotions on fast track. The petitioner had stated that he had made representations but the respondent had informed him that the petitioner was not entitled to consideration for promotion in Grade IV and that by mistake the petitioner had been promoted to Group III with effect from 1st September, 1982 under NRAS, when he should have been promoted in normal course to Group III on 3rd May, 1984.

9. The petitioner filed another O.A. No. 1757/1994 challenging the vires of letter dated 5th March, 1983 by which the cut off date for educational qualifications was fixed as 31st December, 1981. It was the contention of the petitioner that the said date was irrelevant and arbitrary as the petitioner was denied promotion in spite of the fact that he had acquired a Bachelors Degree in Aeronautical Engineering on 1st September, 1982. It was stated that the petitioner was entitled to be considered for promotion under NRAS to Group IV as he had

acquired the said degree. The date of acquisition cannot be a ground to deny him promotion to Group IV.

10. The two O.A.s were disposed of vide detailed decision dated 8th August, 1997. The issue raised by the petitioner and considered by the tribunal was noticed in paragraph 6 of this order and the relevant portion of which reads as under:

“6. The essential issue seeking determination in this case in our opinion is of the “cut-off date”. Were the respondents entitled to impose a cut-off date; did this cut off date result in discrimination and unequal treatment that rendered it illegal in the light of Articles 14 and 16 of the Constitution; did the orders setting out the cut off date were retrospective in nature; and did the respondents initially grant the benefit to the applicant, halfhearted as it was, but then illegally took it away? It would be best if these issues are dealt with in the light of the very detailed presentation made by the applicant; the respondents were by and large quiescent apart from their right to fix a cut off date and their assertion that no discrimination had taken place vis-à-vis the applicant.”

11. The said issue was decided against the petitioner, inter alia, holding as under:

“7. The first point made by the applicant is that the cut off date fixed by the respondents had no nexus with the objective. He points out that the respondents were flexible in fixing the cut off date. When the NRAS was promulgated, it was to apply to persons in

position on 1.2.1981. However, the relevant orders were issued only on 2.11.1981 and all those who had acquired the qualifications for entry to higher grades on 1.2.1981 were made eligible for FTP. Then in 1983, the cut off date was shifted successively from 1.2.1981 to 2.11.1982 and then finally to 31.12.1981. The object of the scheme was to provide promotion to a large number of persons in lower grades who had earlier entered the service of CSIR with higher qualifications corresponding to entry level qualifications for higher grades or had acquired such higher qualifications during the course of their service with CSIR. If the object was either to remove stagnation or to encourage acquisition of higher qualifications or to provide avenues of promotion, then there should have been no need for any cut off date at all. Thus the proper course would have been to make FTP open to all those who acquired the higher qualifications, as and when they did.

8. XXXXX

9. Having given careful thought to the arguments advanced by the applicant, we are unable to persuade ourselves that the cases cited above are of any help to his cause. Neither the applicant nor the respondents have produced for our perusal the NRAS by which the respondents decided to enforce the FTP to those holding entry level qualifications for higher grades, provided they were in service on 1.2.1981 and had acquired such higher qualifications prior to 31.12.1981. The applicant himself has not impugned the scheme, though in O.A. No. 1757/94 he has impugned the letter dated 4.7.1994 by which certain clarifications and amendments to that scheme have been enforced. The essential point is that the

scheme laid down a cut off date and was not open-ended, in the sense that those who acquired higher qualifications would become eligible for consideration to promotion on the fast track, irrespective of when they acquired such higher qualifications. If there had to be a cut off date, then it necessarily had to take into account only those who were in service at the time and had the requisite higher qualifications. The orders enforcing the scheme were issued on 2.11.1981 and that initially was the cut off date. We find no dichotomy or irrationality in making the scheme relevant to those who were entitled on the date of issue of the order. The employees who acquired higher qualifications could, as the applicant was also informed, compete with the direct recruits for lateral entry into the higher grades, but they could not claim the exclusive right for consideration for promotion as internal candidates on acquisition of higher qualifications while in service. The case of such employees, of whom the applicant is one, could not be on the same footing as pensioners or teachers.

10. The second hint of the argument of the applicant is that even though the initial orders were issued on 2.11.1981, they were followed by an amendment dated 5.3.1983 by which the cut off date for eligibility was extended from 2.11.1981 to 31.12.1981. The applicant assiduously argued that the position underwent a fundamental change with the issue of the orders in 1983 because, by virtue of this order retrospectivity was given to the scheme but only for a limited period which was based on an arbitrary and whimsical exercise of power. Properly speaking, according to the applicant, the order of 1983 should have extended the benefit to all those who had acquired the

higher qualifications upto that date and the applicant having admittedly acquired the higher qualifications in the meanwhile was entitled to the benefit of the scheme. If the initial order itself had been issued on 5.3.1983, we would have no hesitation in agreeing with the applicant. However, it is clear that the order dated 5.3.1983 is a corollary of the order dated 2.11.1981 and the two orders have to be read together. What the 1983 order did was to extend the benefit of the 1981 order for a limited period. This was a policy decision of a competent authority, viz., the General body of the CSIR and we consider it outside our domain to go into the issue as to whether such a policy decision should have confined eligibility only to 31.12.1981 or should have gone beyond. In our view, when the order dated 2.11.1981 is amended by an order dated 5.3.1983, we cannot say that the 2.11.1981 order has disappeared and therefore the 1983 order has to be read as a fresh order and the cut off date therefore must be the date of the amending order.”

12. Thereafter, the tribunal considered the second contention of the petitioner that he was denied permission to seek a higher post in a third organization on the ground that he has already obtained FTP and secondly he was denied promotion to the higher grade in view of NRAS and the office orders. The petitioner in this connection had referred to Office Memorandum dated 3rd March, 1994. The contention was considered and rejected by the tribunal, observing:

“12. The applicant submitted that the only grievance he had with the orders was that his qualification of Associate Member of Aeronautical Society of India was that of entry level to grade IV of the service which was in the scale of Rs.700-1300, while the above mentioned orders merely promoted him from Group II to Group III. It is in that context that he has impugned in O.A. 1757/94 the O.M. dated 3.3.1994 whereby the respondents have clarified that there will be no direct promotion from Grade II to Grade IV; in other words, there will be no grade jumping. The applicant also refers to the letter of CSIR dated 26.2.83 (A14 in OA No. 1757/94) which states, amongst other things, in para 4 as follows:

“The Scientific and Technical Staff as on 2.11.1981 who hold M.Sc. or B.E. or equivalent degree will move to Group IV on promotion to the grade of Rs.700-1300 irrespective of the fact whether they are holding scientific or technical posts. the staff appointed to various entry level posts now introduced in Group III on or after 24.11.1982, will remain in Group III even if they hold M.Sc./B.E. degree and shall be eligible for assessment promotion grade by grade in Group III.”

13. We have seen the above two communications. The impugned O.M. of CSIR (A-1 in OA 1757/94) dated 3.3.1994, clarifies as follows:

“The employees in Group II possessing qualification of group IV were eligible for placement in Group III i.e. up to grade III(2) through faster track scheme, as mentioned in para 3 *ibid*. It is therefore clarified that such employees would move

by normal assessment on completion of prescribed number of years of service to grade III(3) and later to grade III(4). These employees could be placed in Group IV on their promotion to the grade of Rs.700-1300 (pre-revised) and Rs.2200-4000 (revised), provided they had come to Group III before 24.11.82. The employees appointed to the Group III on or after 24.11.82 shall not be eligible for placement in group IV even though they may be possessing the qualifications of M.Sc. or B.E. The conditions of first class degree in M.Sc./B.E. will not be applicable for such a movement.”

13. The last contention of the petitioner related to the change of date of promotion in Group III from 1st September, 1982 to 3rd May, 1984. Challenge made by the petitioner in this regard was accepted by the tribunal for the following reasons:

“14. In O.A. No. 2990/91, the applicant impugnes the O.M. No. 3/75/91-E-III dated 28.1.91. This is in fact a reply to the representation made by him regarding his promotion under FTP scheme. The points made in that O.M. may be summarized. Firstly, the applicant is informed that he is not entitled for promotion under the FTP Scheme of NRAS as he acquired the higher qualifications after 31.12.81. It was further informed that as per an order dated 6.11.90, employees who were in position as on 31.12.81 and who had acquired entry level qualifications of next higher group may be assessed once to the next higher grade in the same group 2 years earlier than the normal period of assessment. Thirdly, he is told that as per the order dated 6.11.90, he

was eligible for promotion as Technician Grade VIII w.e.f. 3.5.84 instead of 1.9.82. In short, the applicant is being informed by this letter that he had been prematurely promoted and that his promotion may be postdated from 1.9.82 to 3.5.84. We find that this order cannot stand scrutiny at all. The applicant was given promotion from 1.9.82, whether rightly or wrongly, and this promotion created a vested interest. The respondents cannot, after a lapse of eight years, on discovery of the so called mistake, which has also not been satisfactorily explained, change the date of promotion without giving due opportunity to the applicant to show cause. Such an action would be patently in contravention of the principles of natural justice.”

14. The operative portion of the order of the tribunal reads as under:

“15. In the light of the above discussion, we come to the following conclusions:-

- (i) The applicant is not entitled to promotion as Scientist B w.e.f. 1.9.1982 in the pay scale of Rs.700-1300 (pre-revised) with consequential benefits;
- (ii) The orders of respondent No. 1 and 2 in O.A. No. 1757/1994, dated 3.3.94, 4.7.94 and 16.11.1984 are not ultravires;
- (iii) The respondents’ O.M. dated 28.1.91 is quashed to the extent it seeks to postpone the date of promotion of the applicant from 1.9.1982 to 3.5.1984.”

15. The aforesaid order of the tribunal was made subject matter of challenge before the High Court in Writ Petition (Civil) No. 4817/1997 but the challenge was rejected by the detailed judgment dated 16th November, 1998. The said judgment no doubt records that NRAS itself was not under challenge but the challenge to the cut off date for implementation of NRAS was specifically made, examined and was rejected. Other findings of the tribunal were also upheld. The petitioner filed an SLP against the said judgment but again was unsuccessful.

16. The aforesaid order of the tribunal, therefore, got stamp of approval from the High Court and attained finality in view of the decision of the High Court and dismissal of the SLP. The petitioner, it is apparent, has not remained quiet thereafter. He had repeatedly approached tribunal by filing one petition/application after the other. Along with the counter affidavit filed with Writ Petition (Civil) No. 10395/2004, the respondent has given list of petitions/applications filed by the petitioner, which are as under:

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<u>Sr.</u> <u>No.</u>	<u>Applicant</u>		<u>Respondent</u>	<u>Case No.</u>
01.	Yash Pal	vs	CSIR & Ors	OA No. 2990/1991 with OA No.

				1757/1994
02.	Yash Pal	vs	CSIR & Ors	RA No. 219/1997 in OA No. 2990/91 with OA No. 1757/94
03.	Yash Pal	vs	CSIR & Anr	CWP No. 4817/1997
04.	Yash Pal	vs	DG, CSIR & Anr.	LPA No. 512/2000
05.	Yash Pal	vs	DG, CSIR & Ors	SLP (C) No. 4127/99
06.	Yash Pal	vs	DG, CSIR	RA No. 6616/2000
07.	Yash Pal	vs	Dr. R.A. Mashelkar, DG, CSIR & Ors	CP (Civil) 383 of 2001 MA No. 1647 of 2001 OA No. 2990 of 1991
08.	Yash Pal	vs	DG, CSIR	CMP No. 4971/99 & RA No. 6616/2000
09.	Yash Pal	vs	-do-	CW No. 5282/2001 CM No. 9053/2001
10.	Yash Pal	vs	DG, CSIR & Ors	OA No. 2493/2001 MA No.2095/2001
11.	Yash Pal	vs	-do-	CM(RA) No. 11180/01 in CW No. 5282/2001
12.	Yash Pal	vs	-do-	OA No. 399/2003 MA No. 420/2003
13.	Yash Pal	vs	-do-	OA No. 1755/2003 MA No. 1486/2003

”

17. The impugned order dated 6th May, 2004 dismisses O.A. No. 1755/2003 filed by the petitioner. The prayer made in the said O.A. reads as under:

“(a) To judicially review the New Recruitment and Assessment Scheme (NRAS) of the respondent and declare them ultra vires violative of Article 14, 16 and 39 (d) of the constitution.

(b) If the NRAS is declared ultra vires to the Constitution of India to direct the respondent to grant placement in Group IV on the basis of interview held on 16th February 1983 as per direction by the Hon'ble Supreme Court in State of Bihar vs Dr. Braj Kumar Mishra 1999 SOL Case No. 676.

(c) To grant consequential benefits including arrears and interest @ 18% p.a. from the date of due to date of payment."

18. The tribunal has dismissed the O.A. on the principles analogous to res judicata.

19. The tribunal is right in dismissing the O.A. No. 1755/2003 on the principles of res judicata and constructive res judicata. As noticed above, the challenge to the cut off date for FTP under NRAS was specifically challenged in O.A. Nos. 2990/1991 and 1757/1994 but the challenge was specifically rejected vide decision dated 8th August, 1997. The said issue cannot be re-agitated and made subject matter of challenge once again. The principle of constructive res judicata are equally applicable and an adjudication is conclusive and final not only as to the matters determined but also as to every other matter which the parties might and ought to have agitated and have had decided and was incidentally or essentially connected with the subject matter of the first litigation. This is the principle underlying explanation

IV to Section 11 and Order II Rule 2 of the Code of Civil Procedure, 1908. General principles of res judicata are applicable to the proceedings before the tribunal as well as writ proceedings. These have been repeatedly applied by the Courts to prevent a litigant from raising a new plea or ground on the principle of “might and ought” and once an opportunity is lost, then the principle of constructive res judicata should be applied. Repeated litigation on the same cause is depreciated as contrary to public policy. Recently in ***M. Nagabhushana vs. State of Karnataka and Others***, (2011) 3 SCC 408, it has been held as under:

“26. Following all these principles a Constitution Bench of this Court in **Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra** : (1990) 2 SCC 715 laid down the following principle:

...an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ

case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata

27. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of Constructive Res Judicata, as explained in explanation IV to Section 11 of the CPC, are also applicable to writ petitions.”

20. The petitioner has relied upon order dated 30th May, 2003 in O.A. No. 399/2003, which for the sake of convenience is reproduced below:

“ The applicant, who appears in person states that he will challenge the validity of New Recruitment & Assessment Scheme (NRAS and subject to aforesaid, he does not press the present application.

2. Allowed as prayed. Subject to aforesaid, OA is dismissed as withdrawn. However, the applicant may challenge the aforesaid in accordance with law.”

21. The said order cannot be construed as an order giving right to the petitioner to challenge NRAS on merits and does not obliterate and do away with the effect of res judicata or constructive res judicata. The said order cannot be construed as an order which prohibits or bars the respondent from raising the plea of res judicata and constructive res judicata. Whether or not the respondent CSIR has been declared as a State, after the

decision of the Supreme Court in ***Pradeep Kumar Biswas versus Indian Institute of Chemical Biology***, (2002) 5 SCC 111, is immaterial and not relevant as in the first round of litigation the question of Articles 14 and 16 has been examined in detail. The respondent had not contended that they were not State and, therefore, violation of Articles 14 and 16 of the Constitution was considered and decided in the first round. Decision in ***Pradeep Kumar Biswas*** (supra) or the order dated 30th May, 2003 does not furnish fresh cause of action to reopen and question matters finally decided. Allegation of 'fraud' has no substance and basis.

22. We may also note that in case NRAS is struck down, the petitioner himself would not be entitled to promotion to Group III. Further, as noticed above, NRAS was superseded by MANAS vide letter dated 12th July, 1990, which was implemented with effect from 1st April, 1988. The Writ Petition (Civil) No. 10395/2004, therefore, deserves to be dismissed and it is accordingly dismissed.

23. As noticed above, in Writ Petition (Civil) No. 23790/2005 the challenge is to the order dismissing O.A. No. 198/2005. In addition to the grounds raised in the Writ Petition (Civil) No. 10395/2004, the petitioner in substance has challenged his non-promotion under MANAS, which as noticed above was

introduced vide letter dated 12th July, 1990 and implemented retrospectively with effect from 1st April, 1988.

24. The stand of the petitioner is that in terms of the decision dated 8th August, 1997 the respondent was required to complete assessment for promotion and grant consequential benefits to the petitioner within three months. In this regard, reference can be made to paragraph 16 of the said decision dated 8th August, 1997, which reads as under:

“16. We dispose of both the O.A.s on the basis of above conclusions. The applicant will be entitled to consideration for further promotion on the basis of his promotion as Technician Grade VIII w.e.f. 1.9.1982. As we have been informed that the consideration of his further promotion has been withheld due to the pendency of these O.A.s, we also direct that the respondents will complete the consideration of his case for further promotion within a period of three months from the date of issue of these orders and also give him all consequential benefits in respect of arrears of pay etc. within a period of three months thereafter.”

25. The petitioner has stated that he filed proforma for assessment promotion on 9th August, 1999 (the delay on the part of the petitioner is apparent) and was called for interview on 18th April, 2000 after about eight months. By communication dated 12th July, 2001, he was informed that the assessment Committee had not recommended the petitioner for promotion. It

is stated in the writ petition that even after two years the petitioner was not promoted. Allegations have been made that the constitution of the Assessment Committee was illegal. It is also stated that the petitioner was denied second chance of assessment under MANAS vide letter dated 20th January, 2003 for not submitting work report in terms of the circular dated 21st April, 1997. The petitioner has stated that MANAS was introduced in September, 1990 and, therefore, cannot be implemented with retrospective effect from 1st April, 1988.

26. The challenge to the date 1st April, 1988 for implementation of MANAS was not specifically raised before the tribunal. The prayer clause before the tribunal in O.A. No. 198/2005 reads as under:

“a) To issue appropriate writ order or direction on nature of writ of certiorari or Mandamus quashing the impugned letter No. 17/66/9/906-PPS dated 21.04.1997 issued by respondent no. 1.

b) To quash the Office Memorandum No.3/75/88-89/2002. EIII dated 20.01.2003 forfeiting the 2nd chance of assessment.

c) A writ of Certiorari calling for the records of the assessment interview held on 18.04.2000 and after perusal quash the proceedings of the assessment committee

intimated vide letter No. 3/75/III/88-89/2001.
EIII dated 12.07.2001.

d) To quash the APAR grading from 1996 to 2003 communicated vide Office Memorandum No. 5(3)/GrIV/2004 Vig dated 23.9.2004.

e) Any other Writ or order or direction which it may deem fit and proper in the facts and circumstances of the case and in the interest of the justice.”

27. Even otherwise we do not find any merit in the said challenge. The scheme may have been introduced from a particular date but for implementing the scheme and giving benefit to employees in view of the stagnation, it can be applied retrospectively. The scheme is given retrospective effect for the benefit of the employees. Further past records can always form basis for promotion. The contention that the employees would have worked harder and performed better in case the scheme had been notified earlier has to be rejected because each and every employee is required to put in his best and perform his duties diligently, efficiently and to best of one's ability.

28. As far as promotion under MANAS is concerned, the case of the petitioner was examined but was rejected by the Assessment Committee, which met on 18th April, 2000. Members of the assessment committee are decided as per rules

and in absence of rules as per policy. The petitioner has not alleged violation of any rule or policy. The assessment was made on the basis of his interview and the grades awarded in the ACRs/APARs. Subsequently, the petitioner was requested to submit his work report and brief particulars for consideration of his case for second chance of his assessment for promotion from Group III (1) to Group III (2) with effect from 1st September, 1988 under MANAS. The petitioner, however, despite several reminders did not submit his work reports. Consequently, he forfeited his second right for consideration under MANAS. The work report, it is explained, is a report submitted by the employee of the work done by him/her during the entire period on the basis of which he or she is to be considered for assessment. The respondent has placed on record letters written to the petitioner informing him that he would miss the second chance for assessment in case he did not submit his appraisal report. By letter dated 12th July, 2001, the petitioner was informed that the Assessment Committee, which met on 18th April, 2000, had not recommended him for assessment promotion with effect from 1st September, 1987, but he was eligible for assessment from Grade III (1) to Grade III (2) with effect from 1st September, 1988, on second chance. He was

required to furnish particulars and submit work report as per enclosed proforma. This was followed the by reminder dated 27th January, 2003 in which it was stated that the petitioner had not submitted his work proforma. By this O.M., the petitioner was also warned and informed that if he fails to submit ACRs/APARs, the reporting officers concerned may furnish the requisite certificates. The officers concerned shall complete the gradings. By another communication dated 21st June, 2004, APARs gradings were communicated to the petitioner and he was advised that if he was not satisfied, he should make a representation against the same. The petitioner made a representation but by O.M. dated 23rd September, 2004, the representation was rejected, inter alia, recording as under:

“ With reference to his representation dated 24.4.04 regarding non acceptance of gradings for the period ending 31.3.96 to 31.3.2000, 31.3.2002 & 31.3.2003, Sh. Yash Pal, Group-III(1) is informed hereby that his representation has been considered by the competent authority and found that the pleas put forth by him for non filling up of his APAR in the first instant and there after not accepting the gradings awarded by his reviewing officer, holds no merit in as much as he was repeatedly requested to submit his self appraisal report of APARs to his reporting officer, but he did not do so. His plea that a Court case pending in the courts, has bearing on his filling up of his APARs, is also not tenable as writing APAR was not an

issue in the said case. However, his APARs had been written by his reporting and reviewing officers without self appraisal report, when he failed to submit the same, in accordance with the rules, which inter-alia state that a Reporting Officer should not wait for indefinite to report upon. If self appraisal is not received within the stipulated period mentioned in the reminder which was issued to the concerned officer, he should write the APAR, on the basis of his experience of the work and conduct of the officer without self appraisal report of the officer. In case, he is not in position to write the APAR without self appraisal, he should inform the administration in writing so that further necessary action can be taken as per rule. Accordingly, the gradings given by his reviewing officer were communicated to him where he has an opportunity to make representation against the gradings.

In view of the above, he is again advised to receive the OMs communicating the gradings if he is not satisfied with the gradings he may make representation against the gradings by substantiating his contentions.”

29. Having seen the conduct of the petitioner, we do not think there is any error or fault in the order passed by the tribunal. The petitioner, it is apparent, is himself responsible for not submitting the details and the requisite forms. Writ Petition No. 23790/2005 is accordingly dismissed.

30. During the course of hearing, it was pointed out to us that the petitioner has not been promoted since the last promotion in

1982. There is no doubt that the petitioner has been litigating with the respondent but this alone cannot be a ground to deny promotion to the petitioner if he has been performing his duties satisfactorily and fulfills the criteria for promotion. The respondent being a State have to act as a model employer and be fair and just. It is natural and normal for employees to aspire for promotion. The petitioner must also realize that he has to give his best and perform his duties diligently and satisfactorily. He must comply with the rules and requirements and submit his self appraisal forms.

31. With the aforesaid observations, the writ petitions are dismissed but there will be no order as to costs.

-sd-
(SANJIV KHANNA)
JUDGE

-sd-
(DIPAK MISRA)
CHIEF JUSTICE

MAY 23, 2011
VKR/KKB